

346.03 Applicability of rules of the road to authorized emergency vehicles.

- (1) The operator of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law, when responding to but not upon returning from a fire alarm, when transporting an organ for human transplantation, or when transporting medical personnel for the purpose of performing human organ harvesting or transplantation immediately after the transportation, may exercise the privileges set forth in this section, but subject to the conditions stated in subs. (2) to (5m).
- (2) The operator of an authorized emergency vehicle may:
- (a) Stop, stand or park, irrespective of the provisions of this chapter;
 - (b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
 - (c) Exceed the speed limit;
 - (d) Disregard regulations governing direction of movement or turning in specified directions.

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(3) The exemptions granted by sub. (2) (b), (c) and (d) apply only when the operator of the emergency vehicle is giving a visual signal by means of at least one flashing, oscillating, or rotating red light, except that the visual signal given by a police vehicle may be by means of a blue light and a red light which are flashing, oscillating, or rotating, and also an audible signal by means of a siren or exhaust whistle, except as otherwise provided in sub. (4) or (4m).

(4) Except as provided in sub. (4m), a law enforcement officer operating a police vehicle shall otherwise comply with the requirements of sub. (3) relative to the giving of audible and visual signals but may exceed the speed limit without giving audible and visual signal under the following circumstances:

- (a) If the officer is obtaining evidence of a speed violation.
- (b) If the officer is responding to a call which the officer reasonably believes involves a felony in progress and the officer reasonably believes any of the following:
 - 1. Knowledge of the officer's presence may endanger the safety of a victim or other person.
 - 2. Knowledge of the officer's presence may cause the suspected violator to evade apprehension.
 - 3. Knowledge of the officer's presence may cause the suspected violator to destroy evidence of a suspected felony or may otherwise result in the loss of evidence of a suspected felony.
 - 4. Knowledge of the officer's presence may cause the suspected violator to cease the commission of a suspected felony before the officer obtains sufficient evidence to establish grounds for arrest.
- (4m) A law enforcement officer operating a police vehicle that is a bicycle is not required to comply with the requirements of sub. (3) relative to the giving of audible and visual signals.

(5) The exemptions granted the operator of an authorized emergency vehicle by this section do not relieve such operator from the duty to drive or ride with due regard under the circumstances for the safety of all persons nor do they protect such operator from the consequences of his or her reckless disregard for the safety of others.

(5m) The privileges granted under this section apply to the operator of an authorized emergency vehicle under s. 340.01 (3) (dg) or (dh) only if the operator has successfully completed a safety and training course in emergency vehicle operation that is taken at a technical college under ch. 38 or that is approved by the department and only if the vehicle being operated is plainly marked, in a manner prescribed by the department, to identify it as an authorized emergency vehicle under s. 340.01 (3) (dg) or (dh).

(6) Every law enforcement agency that uses authorized emergency vehicles shall provide written guidelines for its officers and employees regarding exceeding speed limits under the circumstances specified in sub. (4) and when otherwise in pursuit of actual or suspected violators. The guidelines shall consider, among other factors, road conditions, density of population, severity of crime and necessity of pursuit by vehicle. The guidelines are not subject to requirements for rules under ch. 227. Each law enforcement agency shall review its written guidelines by June 30 of each even-numbered year and, if considered appropriate by the law enforcement agency, shall revise those guidelines.

History: 1983 a. 56; 1985 a. 82, 143; 1987 a. 126; 1995 a. 36; 1997 a. 88; 2007 a. 20; 2011 a. 184; 2015 a. 102.

Sub. (5) limits the exercise of privileges granted by sub. (2). *City of Madison v. Polenska*, 143 Wis. 2d 525, 421 N.W.2d 862 (Ct. App. 1988).

An officer who decides to engage in pursuit is immune from liability for the decision under s. 893.80, but may be subject to liability under sub. (5) for negligently operating a motor vehicle during the chase. A city that has adopted a policy that complies with sub. (6) is immune from liability for injuries resulting from high speed chases. A policy that considered the severity of the crime only in terms of when to strike a vehicle or use road blocks did not comply with sub. (6). *Estate of Cavanaugh v. Andrade*, 202 Wis. 2d 290, 550 N.W.2d 103 (1996), 94-0192.

In order to comply with this section and lawfully proceed through a red stop signal, an authorized emergency vehicle must slow down as may be necessary for safe operation, have given both a visual and an audible signal, and have proceeded with due regard under the circumstances for the safety of all persons. *Brown v. Acuity, A Mutual Insurance Company*, 2013 WI 60, 348 Wis. 2d 603, 833N.W.2d 96, 11-0583.

Reading compliance with subs. (2) (b) and (3) as meeting the due regard standard of sub. (5) ignores the language of sub. (5). Sub. (5) explicitly states that the duty of due regard exists notwithstanding the other exemptions or privileges in this section. The duty of "due regard under the circumstances" is a ministerial duty for purposes of determining immunity under s. 893.80. *Legue v. City of Racine*, 2014 WI 92, 357 Wis. 2d 250, 849 N.W.2d 837, 12-2499.

A private ambulance that is an authorized emergency vehicle usually kept in a given county pursuant to s. 340.01 (3) (i) may not avail itself of the provisions of sub. (2) when proceeding unsolicited to the scene of an accident or medical emergency in an adjacent county. 77 Atty. Gen. 214.

A claim of excessive force in the course of making a seizure of the person is properly analyzed under the 4th amendment's objective reasonableness standard. A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the 4th amendment, even when it places the fleeing motorist at risk of serious injury or death. *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

Police civil liability and the law of high speed pursuit. *Zevitz*. 70 MLR 237 (1987).

346.04 Obedience to traffic officers, signs and signals; fleeing from officer.

- (1) No person including a personal delivery device operator shall fail or refuse to comply with any lawful order, signal, or direction of a traffic officer.
- (2) No operator of a vehicle shall disobey the instructions of any official traffic sign or signal unless otherwise directed by a traffic officer.
- (2t) No operator of a vehicle, after having received a visible or audible signal to stop his or her vehicle from a traffic officer, federal law enforcement officer, or marked or unmarked police vehicle that the operator knows or reasonably should know is being operated by a law enforcement officer, shall knowingly resist the officer by failing to stop his or her vehicle as promptly as safety reasonably permits.
- (3) No operator of a vehicle, after having received a visual or audible signal from a traffic officer, federal law enforcement officer, or marked or unmarked police vehicle that the operator knows or reasonably should know is being operated by a law enforcement officer, shall knowingly flee or attempt to elude any officer by willful or wanton disregard of such signal so as to interfere with or endanger the operation of the police vehicle, the traffic officer, the law enforcement officer, other vehicles, or pedestrians, nor shall the operator increase the speed of the operator's vehicle or extinguish the lights of the vehicle in an attempt to elude or flee.
- (4) Subsection (2t) is not an included offense of sub. (3), but a person may not be convicted of violating both subs. (2t) and (3) for acts arising out of the same incident or occurrence.

History: 1991 a. 316; 2001 a. 109; 2017 a. 13, 347.

That an officer was driving a vehicle equipped with red lights and siren was insufficient to prove that vehicle was "marked" under sub. (3). *State v. Oppermann*, 156 Wis. 2d 241, 456 N.W.2d 625 (Ct. App. 1990).

The knowledge requirement in sub. (3) applies only to fleeing or attempting to elude an officer. The statute does not require the operator of a fleeing vehicle to actually interfere with or endanger identifiable vehicles or persons; he or she need only drive in a manner that creates a risk or likelihood of that occurring. *State v. Sterzinger*, 2002 WI App 171, 256 Wis. 2d 925, 649 N.W.2d 677, 01-1440.

In sub. (3), "willful" modifies "disregard." In that context, "willful" requires a subjective understanding by the defendant that a person known by the defendant to be a traffic officer has directed the defendant to take a particular action, and with that understanding, the defendant chose to act in contravention of the officer's direction. Either willful or wanton disregard is sufficient to result in a statutory violation. An act done "willfully" does not require a showing of personal hate or ill will. Sub. (3) does not provide a good faith exception to compliance. *State v. Hanson*, 2012 WI 4, 338 Wis. 2d 243, 808 N.W.2d 390, 08-2759.

Under both the statute and the pattern jury instructions, there are 3 methods by which the statutory requirements under sub. (3) for knowingly fleeing or attempting to elude a traffic officer, can be satisfied: 1) by increasing the speed of the vehicle; 2) by extinguishing the lights of the vehicle, or 3) by willful or wanton disregard of the signal so as to interfere with or endanger the officer, vehicles, or pedestrians. *State v. Beamon*, 2013 WI 47, 347 Wis. 2d 559, 830 N.W.2d 681, 10-2003.

An unmarked police vehicle displaying red and blue lights is not a marked vehicle for purposes of sub. (2). Section 346.19, regarding the requirements on the approach of an emergency vehicle, is the proper statute to invoke when the proof requirements for fleeing under this section are not met. 76 Atty. Gen. 214.

SUBCHAPTER II

DRIVING, MEETING, OVERTAKING AND PASSING

346.05 Vehicles to be driven on right side of roadway; exceptions.

- (1) Upon all roadways of sufficient width the operator of a vehicle shall drive on the right half of the roadway and in the right-hand lane of a 3-lane highway, except:
- (a) When making an approach for a left turn or U-turn under circumstances in which the rules relating to left turns or U-turns require driving on the left half of the roadway; or
 - (b) When overtaking and passing under circumstances in which the rules relating to overtaking and passing permit or require driving on the left half of the roadway; or
 - (c) When the right half of the roadway is closed to traffic while under construction or repair; or
 - (d) When overtaking and passing pedestrians, animals or obstructions on the right half of the roadway; or
 - (e) When driving in a particular lane in accordance with signs or pavement markings designating such lane for traffic moving in a particular direction or at designated speeds; or
 - (f) When the roadway has been designated and posted for one-way traffic, subject, however, to the rule stated in sub. (3) relative to slow moving vehicles.
 - (g) If the vehicle is a wide implement of husbandry, as defined in s. 347.24 (3) (a), being operated in compliance with any applicable requirement under s. 347.24 (3), 347.245 (1), or 347.25 (2g), and the vehicle is operated as much as practicable on the right half of the roadway and in the right-hand lane of a 3-lane highway, a portion of the vehicle may extend over the center of the roadway into any lane intended for travel in the opposite direction and may extend into any passing lane of a 3-lane highway. A wide implement of husbandry operated as described in this paragraph is subject to any restriction under ss. 346.06, 346.09 (2) and (3), and 346.59.
- (1m) Notwithstanding sub. (1), any person operating a bicycle, electric scooter, or electric personal assistive mobility device may ride on the shoulder of a highway unless such riding is prohibited by the authority in charge of the maintenance of the highway.
- (2) The operator of a vehicle actually engaged in constructing or maintaining the highway may operate on the left-hand side of the highway; however, whenever such operation takes place during the hours of darkness the vehicle shall be lighted as required by s. 347.23.
- (3) Any vehicle proceeding upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand edge or curb of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn or U-turn at an intersection or a left turn into a private road or driveway, and except as provided in s. 346.072.

History: 1995 a. 138; 2001 a. 15, 90; 2009 a. 97; 2013 a. 377; 2015 a. 124; 2019 a. 11.

Cross-reference: See s. 346.59 for minimum speed regulation and duty of slow drivers.

The defendant was driving on the wrong side of the road under this section when he momentarily crossed the center of the road. *State v. Popke*, 2009 WI 37, 317 Wis. 2d 118, 765 N.W.2d 569, 08-0446.

346.06 Meeting of vehicles. Operators of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each operator shall give to the other at least one-half of the main traveled portion of the roadway as nearly as possible.

346.07 Overtaking and passing on the left. The following rules govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules stated in ss. 346.075 (2) and 346.08 to 346.11:

- (2) The operator of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
- (3) Except when overtaking and passing on the right is permitted, the operator of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of the vehicle until completely passed by the overtaking vehicle.

History: 1971 c. 208; 1985 a. 301 s. 4; 1991 a. 316; 1997 a. 32; 2013 a. 365.

346.072 Passing stopped emergency or roadside service vehicles.

- (1g) In this section, "emergency or roadside service vehicle" means any of the following:
- (a) An authorized emergency vehicle giving visual signal.
 - (b) A tow truck flashing red lamps, as required by s. 347.26 (6) (b).
 - (c) Any road machinery or motor vehicle used in highway construction or maintenance displaying the lights specified in s. 347.23 (1) (a) or (b) or, with respect to a motor vehicle, displaying the lights specified in s. 347.26 (7).
 - (d) Any vehicle of a public utility, telecommunications carrier, or cooperative association described in s. 347.26 (9) displaying one or more flashing amber lamps as provided in s. 347.26 (9).
- (1m) If an emergency or roadside service vehicle is parked or standing on or within 12 feet of a roadway, the operator of a motor vehicle approaching the emergency or roadside service vehicle shall proceed with due regard for all other traffic and shall do either of the following:
- (a) Move the motor vehicle into a lane that is not the lane nearest the parked or standing emergency or roadside service vehicle and continue traveling in that lane until safely clear of the emergency or roadside service vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching motor vehicle and if the approaching motor vehicle may change lanes safely and without interfering with any vehicular traffic.
 - (b) Slow the motor vehicle, maintaining a safe speed for traffic conditions, and operate the motor vehicle at a reduced speed until completely past the emergency or roadside service vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching motor vehicle or if the approaching motor vehicle may not change lanes safely and without interfering with any vehicular traffic.
- (2) In addition to any penalty imposed under s. 346.17 (2), any person violating this section shall have his or her operating privilege suspended as provided in s. 343.30 (1o).

History: 2001 a. 15; 2013 a. 291.

346.075 Overtaking certain vehicles and devices.

- (1) The operator of a motor vehicle overtaking a bicycle, electric scooter, or electric personal assistive mobility device proceeding in the same direction shall exercise due care, leaving a safe distance, but in no case less than 3 feet clearance when passing the bicycle, electric scooter, or electric personal assistive mobility device, and shall maintain clearance until safely past the overtaken bicycle, electric scooter, or electric personal assistive mobility device.
- (2) Except as provided in s. 346.48, if the operator of a motor vehicle overtakes a motor bus which is stopped at an intersection on the right side of the roadway and is receiving or discharging passengers, the operator shall pass at a safe distance to the left of the motor bus and shall not turn to the right in front of the motor bus at that intersection.

History: 1973 c. 182; 1977 c. 208; 1985 a. 301; 2001 a. 90; 2019 a. 11.

346.08 When overtaking and passing on the right permitted. The operator of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting the movement in safety and only if the operator can do so while remaining on either the roadway or a paved shoulder, and then only under the following conditions:

- (1) When the vehicle overtaken is making or about to make a left turn or U-turn; or
- (2) Upon a street or highway with unobstructed pavement of sufficient width to enable 2 or more lines of vehicles lawfully to proceed, at the same time, in the direction in which the passing vehicle is proceeding; or
- (3) Upon a one-way street or divided highway with unobstructed pavement of sufficient width to enable 2 or more lines of vehicles lawfully to proceed in the same direction at the same time.

History: 1991 a. 316; 2009 a. 97.

346.09 Limitations on overtaking on left or driving on left side of roadway.

- (1) Upon any roadway where traffic is permitted to move in both directions simultaneously, the operator of a vehicle shall not drive to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be done in safety. In no case when overtaking and passing on a roadway divided into 4 or more clearly indicated lanes shall the operator of a vehicle drive to the left of the pavement marking indicating allocation of lanes to vehicles moving in the opposite direction or, in the absence of such pavement marking, to the left of the center of the roadway. Except as provided in sub. (3) (b) and s. 346.05 (1) (g), in no case shall the operator of a vehicle drive in a lane when signs or signals indicate that such lane is allocated exclusively to vehicles moving in the opposite direction.
- (2) Upon any roadway where traffic is permitted to move in both directions simultaneously, the operator of a vehicle shall not drive on the left side of the center of the roadway upon any part of a grade or upon a curve in the roadway where the operator's view is obstructed for such a distance as to create a hazard in the event another vehicle might approach from the opposite direction.
- (3)
- (a) Except as provided in par. (b), the operator of a vehicle shall not drive on the left side of the center of a roadway on any portion thereof which has been designated a no-passing zone, either by signs or by a yellow unbroken line on the pavement on the right-hand side of and adjacent to the center line of the roadway, provided such signs or lines would be clearly visible to an ordinarily observant person.
 - (b) The operator of a vehicle may drive on the left side of the center of a roadway on any portion thereof which has been designated a no-passing zone, as described in par. (a), to overtake and pass, with care, any vehicle, except an implement of husbandry or agricultural commercial motor vehicle, traveling at a speed less than half of the applicable speed limit at the place of passing.
- (4) Other provisions of this section notwithstanding, the operator of a vehicle may not overtake and pass on the left any other vehicle which, by means of signals as required by s. 346.34 (1), indicates its intention to make a left turn or U-turn.